

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FRED CHISOM,

Plaintiff,

v.

CORRECTIONAL OFFICER FRAZER,

Defendant.

Case No. C05-5327RBL

REPORT AND
RECOMMENDATION

**NOTED FOR:
July 8th, 2005**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. The court has reviewed Mr. Chisom's complaint and finds this action is duplicative of a previous action filed by Mr. Chisom that was dismissed on the merits. *See Chisom v. Frazer*, 3-5073RBL. Defendant Frazer has litigated and prevailed on the issues now raised by Mr. Chisom. Accordingly, this action should be dismissed prior to service with the dismissal counting as a strike pursuant to 28 U.S.C. § 1915 (g).

FACTUAL BACKGROUND

This action deals with defendant Frazer hiring a person other than plaintiff as the unit barber. Plaintiff claims that the hiring was racially motivated and done in retaliation for plaintiffs filing other legal actions. This is the same issue Mr. Chisom lost in *Chisom v. Frazer*, 3-5073RBL.

DISCUSSION

REPORT AND RECOMMENDATION

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1 A complaint is frivolous when it has no arguable basis in law or fact. Franklin v. Murphy, 745 F.2d
2 1221, 1228 (9th Cir. 1984). When a complaint is frivolous, fails to state a claim, or contains a complete
3 defense to the action on its face, the court may dismiss an *in forma pauperis* complaint before service of
4 process under 28 U.S.C. § 1915(d). Noll v. Carlson, 809 F.2d 1446, 575 (9th Cir. 1987) (*citing Franklin*
5 *v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984)). Here, the issues have already been litigated and Mr.
6 Chisom's repeated filing cannot be for any proper purpose. This action should be dismissed with the
7 dismissal counting as a strike.

8 CONCLUSION

9 The Court should dismiss this action as frivolous given that the court has already ruled on the
10 issues. Dismissal on this ground would count as a strike pursuant to 28 U.S.C. § 1915 (g). A proposed
11 order accompanies this Report and Recommendation.

12 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
13 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.
14 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.
15 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to
16 set the matter for consideration on **July 8th, 2005** as noted in the caption.

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18 DATED this 8th day of June, 2005.

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20 /S/ J. Kelley Arnold
21 J. Kelley Arnold
22 United States Magistrate Judge
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